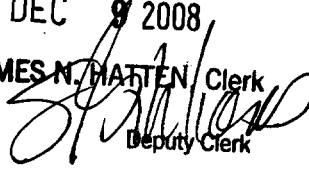


**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
NEWNAN DIVISION**

**FILED IN CLERK'S OFFICE
U.S.D.C. - Newnan**

DEC 9 2008
JAMES N. HATTEN, Clerk
By: 
Deputy Clerk

ANGELIA SOLOMON

Plaintiff

v.

Civil Case No:

DEPARTMENT OF THE ARMY **3 08-CV- 135-JTC**

Defendant

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiff, Angelia Solomon, hereby files this Complaint to compel compliance with the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA").

As grounds, plaintiff alleges as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.
2. Venue is proper in this district pursuant to 5 U.S.C. § 552 (a) (4) (B).

PARTIES

3. Plaintiff, Angelia Solomon, currently resides in Fayetteville, Georgia and is the requestor of the withheld records.

4. Defendant, Department of the Army, is an agency of the United States and has possession of, and control over, the records that Plaintiff seeks. Defendant, Department of the Army may be served with process by (a) sending a copy of the Summons and complaint by registered or certified mail addressed to Civil Process Clerk at the Office of the United States Attorney serving the Northern District of Georgia, David E. Nahmias at 600 U.S. Courthouse, 75 Spring Street SW, Atlanta, Georgia 30303-3309 and (b) by sending a copy of the Summons and Complaint by registered or certified mail to the Attorney General of the United States at Washington, D.C., Michael B. Mukasey, U.S. Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, D.C. 20530-0001, and (c) by sending a copy of the Summons and Complaint by registered or certified mail to the Office of the General Counsel, Department of the Army, 104 Army Pentagon, Washington, D.C. 20310-0104.

CLAIM FOR RELIEF UNDER THE FREEDOM OF INFORMATION ACT

5. The FOIA, 5 U.S.C. § 552, requires an agency of the federal government to release requested records to the public unless one or more specific statutory exemptions apply.
6. An agency must respond to a party making a FOIA request within 20 working days, notifying the party of the agency determination whether or not to fulfill the request and of the requestor's right to appeal the agency determination to the agency head. 5 U.S.C. (a)(6)(A)(i)
7. In "unusual circumstances", an agency may delay its response for a FOIA request or appeal but must provide notice and the date on which a determination is expected to be dispatched. 5 U.S.C. § 552 (a) (6)(B)(i)
8. In unusual circumstances when additional time is needed to respond, the request shall be acknowledged with a description of the circumstances requiring the delay and an indication of the anticipated date for a substantive response that may not exceed 10 additional working days. 5 U.S.C. § 552 (a)(6)(B)(i) If the statutory time limits are not met, the requestor retains the right to treat a delay in response as a de facto denial with full administrative remedies. 5 U.S.C. § 552 (a)(6)(C)(i)
9. The Court has jurisdiction, upon receipt of the Complaint, "to enjoin the agency

from withholding agency records and to order the production of any agency records improperly withheld from the Complainant.” 5 U.S.C. § 552(a)(4)(B)

10. Defendant has failed to determine whether to grant or deny Plaintiff’s FOIA, request, in whole or in part, within 20 business days of receipt, and Defendant has also failed to immediately notify Plaintiff of the outcome of that determination, as is required by the FOIA. 5 U.S.C § 552(a)(6)(A)(i).

11. By failing to make a timely determination, with respect to all of the documents requested and by failing to provide Plaintiff with all the requested records, Defendant has denied Plaintiff of her right to requested information.

12. Unless enjoined by this Court, Defendant will continue to violate Plaintiff’s legal rights to access the requested records.

13. The FOIA provides a mechanism for disciplinary action against agency officials who have acted inappropriately in withholding records. Specifically, when requiring the release of improperly withheld records, if the Court makes a written finding that “the circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously”, a disciplinary investigation is triggered. 5 U.S.C. §552 (a)(4)(F)

14. Plaintiff is entitled to recover costs incurred in this action as provided by 5 U.S.C. § 552(a)(4)(E).

STATEMENT OF THE FACTS

15. Plaintiff incorporates by reference all preceding paragraphs.

16. On 22 August 2008 via fax to the office of the Commanding General, Plaintiff requested a copy of the following documents pertaining to an Equal Opportunity complaint filed against members of that command (Exhibit 1):

a. a copy of the completed investigation I filed against Colonel Deutsch and Lieutenant Colonel Godard:

b. any documents, notes, e-mails, memorandum or information pertaining to my Officer Evaluation Reports or Equal Opportunity complaint sent from or to or collected by the Investigating Officer, Colonel Eugene Miller, Office of The Surgeon General, that were not included in the investigation or final report sent to MG Weightman;

c. a copy of all e-mails, notes, and/or documents relevant to my Officer Evaluation Report or allegations contained in my Equal Opportunity complaint sent from or to any officer or employee of US Army Medical Research and Materiel Command (USAMRMC) or Headquarters, Medical Command/Office of the Surgeon General, to include e-mails sent to and from Colonel Deutsch,

Lieutenant Colonel Godard, Colonel Davies, Major General Weightman, Headquarters, Medical Command and Office of the Surgeon General, Department of the Army Inspector General, Inspector General Fort Gillem, Headquarters, Forces Command, Office of the Staff Judge Advocate Forces Command, Headquarters, First Army, and Office of the Staff Judge Advocate First Army; and

d. a copy of any documents, notes, chronology sheets contained in the USAMRMC Equal Opportunity Advisor's complaint file.

17. On 11 September 2008, Plaintiff faxed a copy of the request to Mr. James Ferrari, FOIA Officer for Defendant and agreed to pay reasonable search and copy fees. (Exhibit 2).

18. Plaintiff properly requested that the Defendant, Department of the Army process Plaintiff's FOIA request, which sought agency records within the custody and control of the Department of the Army.

19. On 18 September 2008, via e-mail, Mr. James Ferrari, FOIA Officer for Defendant acknowledged receipt of the requested documents as of 29 August 2008 (Exhibit 3).

20. On or about 9 September 2008, Defendant provided a copy of certain documents requested under paragraph 5(a) above, and on 9 October 2008, Defendant, at Plaintiff's request, provided a copy of a statement that had not been

included in the documents sent on or about 9 September 2008 (Exhibit 4). Plaintiff is unable to ascertain or verify, and has not been notified by the Defendant, whether Defendant has provided a copy of all the documents specified under paragraph 5(a) above.

21. To date, Defendant has not granted, denied, or responded in accordance with the FOIA to Plaintiff's FOIA request.

22. The Defendant, Department of the Army wrongfully withheld agency records requested by Plaintiff.

23. Plaintiff has exhausted applicable administrative remedies with respect to the Defendant's, the Department of the Army, wrongful withholding of the requested records.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court:

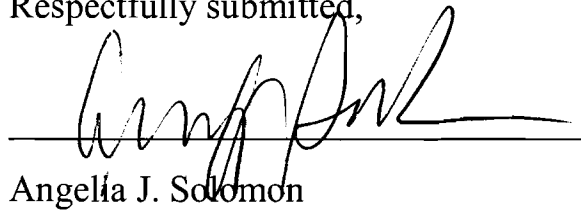
A. Order Defendant to disclose records and to promptly provide Plaintiff with copies of all requested records sought in Plaintiff's 22 August 2008 FOIA request;

B. Declare that Defendant has violated FOIA by failing to respond, as required by FOIA, to Plaintiff's 22 August 2008 request and by failing to provide all documents and records responsive to Plaintiff's 22 August 2008 FOIA request;

- C. Provide for expeditious proceedings in this action;
- D. Make written findings that the circumstances surrounding withholding raise questions whether there has been arbitrary or capricious agency action and make a referral of the matter to the Merit Systems Protections Board for investigation pursuant to 5 U.S.C. § 552(a)(4)(F);
- E. Award Plaintiff litigation costs incurred in this action; and
- F. Grant such other and further relief as the Court may deem just and proper.

This 9th day of December, 2008

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Angelia J. Solomon', is written over a horizontal line.

Angelia J. Solomon

121 Beaverbrook Lane
Fayetteville, Georgia 30215
(770) 310-7052